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ALEXANDER L. STEVAS
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Nos. 84-494 & 84-528

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

NATIONAL LABOR RELATIONS BOARD,
Petitioner,
v.
MACHINISTS LOCAL 1327, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, *et al.*,
Respondents.

VIOLA LAPINSKI, *et al.*,
Petitioners,
v.
MACHINISTS LOCAL 1327, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, *et al.*,
Respondents.

On Petitions for a Writ of Ceritorari to the United States Court of Appeals for the Ninth Circuit

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MEMORANDUM FOR THE RESPONDENT UNIONS

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MEMORANDUM FOR THE RESPONDENT UNIONS

The first reason for granting the National Labor Relations Board's petition for a writ of certiorari in No. 84-494 stated therein is that:

> The decision of the court of appeals that a union does not commit an unfair labor practice by enforcing a [union] constitutional provision restricting resignations during a strike or within 14 days preceding its commencement is * * * in direct conflict with the decision of the Seventh Circuit in *Pattern Makers League v. NLRB*, 724 F.2d 57 (7th Cir. 1983) * * *.
>
> The conflict between the Seventh and Ninth Circuits concerns an important and recurring question under the Act, which this Court has expressly left open on two occasions. [See] *NLRB v. Granit State Joint Board, Textile Workers Union*, [409 U.S. 213 (1972)] and *Booster Lodge No. 405, International Association of Machinists v. NLRB*, 412 U.S. 84 (1973) * * *. Now that the Board has decided that important question and the Board's decision has precipitated a direct conflict in the circuits, it is appropriate for the Court to settle the issue. [NLRB Pet. 7-10. See, to the same effect, the petition for a writ of certiorari in *Lapinski, et al. v. Machinists*, No. 84-528, pp. 7-8, 13-14.]

The respondent unions agree with the foregoing but suggest that in light of the following considerations the certiorari petitions in Nos. 84-494 and 84-528 should be held on the Court's docket.

1. On October 1, 1984 the Court granted the petition for a writ of certiorari in *Pattern Makers League of North America, AFL-CIO, et al. v. NLRB, et al.*, No. 83-1894, and thereby agreed to review the Seventh Circuit's decision in conflict with the Ninth Circuit's decision herein. *Pattern Makers* is presently scheduled to be argued in the January, 1985 session; granting the petitions here and consolidating the cases would in all likelihood require rescheduling and delaying the submission of the *Pattern Makers* case.

2. It does not appear that there is any significant difference between *Pattern Makers* and the instant cases of the kind that would assist the Court in better under-

standing the common question presented in that case and in these or that question's ramifications. While the union rule at issue in *Pattern Makers* and the rule at issue here are different in form, the NLRB has, in the underlying proceedings leading to these certiorari petitions, treated the two as legally indistinguishable and states in its petition "We do not believe that the difference between the provision in *Pattern Makers* and the one in the instant case is legally significant." NLRB Pet. 8 n. 7. It is our position that in this one respect the Board's reasoning cannot be faulted.[1]

CONCLUSION

For the above-stated reasons, the petitions for a writ of certiorari in these cases should be held for further action pending the disposition of *Pattern Makers League of North America, AFL-CIO, et al. v. NLRB, et al.*, No. 83-1894, petition for a writ of certiorari granted October 1, 1984.

Respectfully submitted,

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[1] Ms. Lapinski, et al. (the four individuals who sought to resign their union membership and by so doing precipitated these cases and, who are respondents in No. 84-494 and petitioners in No. 84-528) are not, of course, parties in the *Pattern Makers* case. See Memorandum for Respondent Individual Employees and Motion to Expedite Consideration of Petitions for Certiorari to Consolidate with No. 83-1894 and No. 84-528, p. 3. But they can protect their interests in the way parties to cases behind a lead case normally do—by filing a brief *amicus curiae*.